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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,725	10/29/2003	Jeffrey M. Sieracki	1023-227US01	6322
28863	7590	07/13/2007		
SHUMAKER & SIEFFERT, P. A.			EXAMINER	
1625 RADIO DRIVE			KAHELIN, MICHAEL WILLIAM	
SUITE 300				
WOODBURY, MN 55125			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			07/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/696,725

Applicant(s)

SIERACKI ET AL.

Examiner

Michael Kahelin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-8, 10-23, 33-41 and 54-58 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 15-17 and 35-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 8, 10-14, 18-23, 33, 34, 38-41, and 54-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The Examiner was unable to locate the IDS indicated as being resubmitted in "Remarks" of 4/4/2007.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 4, 8, 10, 11, 13, 14, 18, 19, 20, 22, 23, 33, 34, 38-40, and 54-58 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stomberg et al. (US 6,665,565, hereinafter "Stomberg").

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

6. In regards to claims 1, 13, 33, and 54, Stomberg discloses a system comprising a watchdog unit (130) that receives signals from a programming device (102) and sends a signal to an IMD (132) upon interruption of communication between the programmer and the watchdog device (col. 4, line 32). To determine interruption in the signal, it is inherent that a "watchdog timer" is used to determine an interval of time in which no signals are received because utilizing a timer that determines a period wherein no pulses are received is the only way to determine a loss of a digital signal. Alternatively, it is well known in the communication arts to utilize timers to establish a period of time

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having no received signal to determine a loss of signal to allow the ubiquitous microprocessor component to determine a loss of signal. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Stomberg's invention with a means to utilize a timer to establish a period of time having no received signal to determine a loss of signal to allow the ubiquitous microprocessor component to determine a loss of signal.

7. In regards to claims 2, 14, 22, and 23, the watchdog unit is coupled to the programmer with a cable (col. 5, line 48) and forms part of the programming head (col. 5, line 17).

8. In regards to claims 4, 10, 19, 34, 39, 55, and 57, the watchdog responds to interruption of the communication link. Therefore, the timer (as explained above) is reset for any and all signals received by the watchdog from the programmer.

9. In regards to claims 8, 18, 38, and 56, the IMD reverts to a previously stored program (212).

10. In regards to claims 11, 20, and 40, the watchdog receives power (in the form of signals from the programming device), detects failure, activates auxiliary power (in the form of signal generation), and sends a signal to the IMD to change the mode of operation (212).

11. In regards to claim 58, the device is a neurostimulator (col. 7, line 56).

12. Claims 12, 21, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stomberg. Stomberg discloses the essential features of the claimed

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invention, including a user interface (col. 6, line 62), but does not expressly disclose that the interface comprises an emergency-off switch. It is well known in the electrical stimulation arts to provide external controllers with emergency off switches to allow a user to deactivate or modify an implant's function in the case of malfunction. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Stomberg's invention with an emergency off switch to allow the user to deactivate or modify the implant's function in the case of malfunction.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 2, 4, 8, 10-14, 18-23, 33, 34, 38-41, and 54-58 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Oman (US 4,926,865) is one of many teachings of utilizing a timer to determine a loss of signal.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWK

MR 7/13
7/13/07

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GEORGE R. EVANISKO
PRIMARY EXAMINER

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